

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

TRUE THE VOTE, INC.

Plaintiff-Appellant,

v.

INTERNAL REVENUE SERVICE, *et al.*

Defendants-Appellees.

No. 14-5316

JOINT SUBMISSION ON BRIEFING FORMAT

Pursuant to this Court's Order of March 27, 2015, the parties in the above-captioned appeal respectfully submit this joint submission regarding the briefing format.

Four issues are raised in this appeal:

1. Did the district court err in holding that Plaintiff-Appellant's First Amendment claim for monetary damages pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) (Count III) is not cognizable against agents and officials of the IRS?

2. Did the district court err in holding that Plaintiff-Appellant's

Amended Complaint failed to state a claim for relief against the Government based on unlawful inspections and disclosures of tax return information in violation of 26 U.S.C. § 6103 (Count IV)?

3. Did the district court err in holding that Plaintiff-Appellant's First Amendment and Administrative Procedure Act (Counts II and V) claims against the Government are moot?

4. Did the district court err in holding that Plaintiff-Appellant's request to stay agency action—specifically, Plaintiff-Appellant's request to enjoin public release of its application for tax-exempt status—is moot?

The parties propose a briefing format as follows:

Plaintiff-Appellant's Opening Brief

Plaintiff-Appellant intends to file a single opening brief in compliance with the 14,000-word limit set forth in Federal Rule of Appellate Procedure 32(a)(7)(B)(i) and Circuit Rule 32(a).

Defendants-Appellees' Briefs in Response

Pursuant to a determination made by the Department of Justice at the beginning of this litigation, the Government and the Defendants-Appellees sued in their official capacities (the "Government") are represented by the Tax Division of

the Department of Justice. The Defendants-Appellees sued in their individual capacities (the “Individual-Capacity Appellees”) are represented by private counsel.

In light of this arrangement, and consistent with the practice followed in the district court, the parties propose that the Individual-Capacity Appellees will jointly file a single responsive brief that addresses the *Bivens* claim (Issue 1), and the Government will file a separate brief that addresses the remaining claims (Issues 2 through 4). Because the Defendants-Appellees’ respective briefs will address distinct issues, neither will repeat the legal argument presented by the other. Defendants-Appellees propose that their respective briefs will each comply with the standard 14,000-word limit for responsive briefs. Plaintiff-Appellant does not oppose this request.

Plaintiff-Appellant’s Reply Brief

Plaintiff-Appellant proposes filing one reply brief in response to the responsive briefs of the Government and the Individual-Capacity Appellees. Because Plaintiff-Appellant might be replying to a total of up to 28,000 words (14,000 words per responsive brief), Plaintiff-Appellant proposes that its reply brief be limited to 14,000 words, or twice the 7,000 word limit for reply briefs as

provided by Federal Rule of Civil Procedure 32(a)(7)(B)(ii). Defendants-Appellees do not oppose this request, provided that no more than 7,000 words from Plaintiff-Appellant's reply is directed toward any single responsive brief.

Accordingly, Plaintiff-Appellant proposes the following breakdown of words necessary to address each issue in its reply brief:

Issue 1 (*Bivens*) – approximately 7,000 words

Issue 2 (§ 6103) – approximately 2,000 words

Issue 3 (Mootness) – approximately 4,500 words

Issue 4 (Stay Request) – approximately 500 words

Dated: April 27, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Joint Submission on Briefing Format with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on April 27, 2015. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: April 27, 2015

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